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FISCAL IMPACT STATEMENT

LS 6586

BILL NUMBER: HB 1400

NOTE PREPARED: Jan 10, 2004

BILL AMENDED:

SUBJECT: Child Abuse or Neglect.

FIRST AUTHOR: Rep. Neese

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that a child who is a passenger in a motor vehicle operated by the child's parent, guardian, or custodian while the parent, guardian, or custodian is intoxicated is a: (1) victim of child abuse or neglect; and (2) child in need of services.

Effective Date: July 1, 2004.

Summary of Net State Impact: This bill may increase the total number of Children in Need of Services (CHINS) cases. The Family and Social Services Administration (FSSA) estimates the average cost for providing services for a CHINS is approximately \$14,451 annually. Numbers pertaining to Operating a Vehicle While Intoxicated (OWI) convictions, when the individual had their child in the car, are currently unknown. Total increases in expenditures for the state are dependent upon the number of parents, guardians, and custodians who are stopped by law enforcement for driving while intoxicated, and the number of children referred for a CHINS determination.

The bill may increase the caseloads of the county Offices of Family and Children, juvenile courts, and county prosecutors. Out-of-home placements and services to CHINS are funded by the local county Family and Children's Fund. Certain out-of-home placements may be matched with federal IV-E funds; CHINS are also eligible for Medicaid services. Child welfare caseworkers and other staff of the local Offices of Family and Children are state employees. Additions to the number of children being supervised by the county Office of Family and Children may result in the need for additional staff.

Indiana statute disallows a defendant from being convicted of multiple punishments for the same offense in a single trial. If evidence is used to establish the essential elements of one challenged offense and is also used to establish all of the essential elements of another challenged offense, it is considered double jeopardy. In

the case of this bill, a defendant would initially be charged with both an OWI and child abuse or neglect. If convicted of both, the two charges would merge as a result of the double jeopardy clause; the more serious offense of the two would remain on the person's record, the other would not. In this case, the child abuse or neglect charge would remain.

Penalties for the two crimes differ. As a result, the penalty imposed upon an individual may remain the same, increase, or decrease. Depending on what scenarios occur, the state may have a larger or smaller number of individuals in jail for a longer or shorter period of time. State expenditures could increase and local expenditures decrease if an offender is incarcerated in a state prison rather than in a local jail. State expenditures could also increase if an offender is incarcerated in a state prison for a longer period of time. State expenditures could decrease if the offender were incarcerated for a shorter period of time.

Explanation of State Expenditures: This bill would allow the courts to charge a person who is charged with an OWI and who had their child in the car when they committed the crime, with child abuse or neglect.

Children in Need of Services: This bill may increase the total number of CHINS cases. If this occurs, state expenditures will increase. Under current practice an order of the court decides whether a child is a CHINS.

The caseloads of the county Office of Family and Children, court with juvenile jurisdiction, and county prosecutor may increase. This increase in caseload and associated costs is unknown and contingent upon judicial action. FSSA estimates the average cost of providing services for a CHINS to be approximately \$14,451 annually. Total increases in expenditures are dependent upon the number of parents, guardians, and custodians who are stopped by law enforcement for driving while intoxicated, and the number of children referred for a CHINS determination.

Out-of-home placements and services to CHINS are funded by the local county Family and Children's Fund. Certain out-of-home placements may be matched with Federal IV-E funds, and CHINS are eligible for Medicaid services. Child welfare caseworkers and other staff of the local Offices of Family and Children are state employees. Additions to the number of children being supervised by the county Offices of Family and Children may result in the need for additional staff.

In CY 2002 total CHINS expenditures were \$195.6 M for 13,500 children.

Operating a Vehicle While Intoxicated: Current statute allows the court to charge a person with neglect of a dependant if they knowingly or intentionally place the dependent in a situation that endangers the dependent's life or health. Both FSSA and the Indiana Prosecuting Attorney's Council report that this charge is used, however, it is not common procedure. Data pertaining to the number of persons charged with this crime is currently unavailable.

OWI Numbers: A total of 23,694 individuals were convicted of an OWI charge in CY 2003. An additional 2,739 people received diversions. The number of diversions and convictions which would have fallen under the requirements of this bill are unknown.

CY 2003 Numbers for OWI's and OWI Diversions.		
Criminal Offense	Number of Convictions	Number of Diversions
OWI	19,063	2,447
OWI - Unspecified	18	2
Prior OWI within past 5 years	4,500	284
OWI resulting in injury	78	5
OWI resulting in death	35	1
Total	23,694	2,739
*Note: Information is an adjusted average for CY 2003.		

Double Jeopardy: Indiana statute disallows a defendant from being convicted of multiple punishments for the same offense in a single trial. If evidence is used to establish the essential elements of one challenged offense and is also used to establish all of the essential elements of another challenged offense it is considered double jeopardy. In the case of this bill, a defendant would initially be charged with both an OWI and child abuse or neglect. If convicted of both, the two charges would merge as a result of the double jeopardy clause; the more serious offense of the two would remain on the persons record, the other would not. In this case, the child abuse or neglect charge is the more serious of the two.

Penalties for the two crimes differ. As a result, the penalty imposed upon an individual may remain the same, increase, or decrease. *See Examples A, B & C.* This factor would likely affect state expenditures. Actual penalties imposed are dependent on the number of OWIs the person has been convicted of within the past five years; when the child abuse or neglect conviction occurs (whether it is the person's first, second, third, etc. OWI); and how many OWIs the person may be convicted of in the future.

Example A (Increase): A person who is convicted and penalized for the crime of child abuse or neglect, instead of an OWI, would receive a Class C Misdemeanor penalty as opposed to a Class D Felony. If this scenario occurred, the state would experience both a decrease in revenue (the penalty fine would be reduced from \$10,000 to \$500) and in expenditures (the range of prison term would be decreased from a possible 6 months to three years to a maximum of 60 days).

Example B (Same): An individual who has already been convicted of an OWI and is convicted of child abuse or neglect (instead of their second OWI) would receive the same penalty, a Class D Felony.

Example C (Increase): A person convicted of child abuse or neglect, instead of their first OWI, would receive a Class D Felony as opposed to a Class C Misdemeanor. This would increase revenue for the state (the penalty fine would be increased from \$500 to \$10,000) and increase expenditures (the range of prison term would be increased from a maximum of 60 days to a possible 6 months to three years).

Penalties for Child Abuse and Neglect and OWI Convictions.			
	Charge: Child Abuse and Neglect	Charge: OWI	Charge: OWI (2) (2nd offense within 5 years)**
OWI	Class D Felony	Class C Misdemeanor	Class D Felony
Bodily Injury	Class C Felony	NA*	NA*
Serious Bodily Injury	Class B Felony	Class D Felony	Class C Felony
Death	Class A Felony	Class C Felony	Class B Felony
<p>*NA: Penalty is not included in the Indiana Code.</p> <p>** If an individual has been convicted of two prior OWIs, they can be charged as a habitual substance offender. This would allow the court to add an additional 3 to 8 years of jail time to the defendant's sentence.</p>			

The requirements of this bill may result in several different scenarios. They are the following.

Penalty Changes Under the Requirement of this Bill.			
	Current Penalty	Penalty Under this Bill	Increase, Decrease, Same
CAN instead of OWI	Class C Misdemeanor	Class D Felony	Increase
CAN OWI	Class D Felony	Class C Misdemeanor	Decrease
CAN OWI (2+)	Class D Felony + 3 to 8 years	Class D Felony	Decrease
OWI CAN	Class D Felony	Class D Felony	Same
OWI (2) CAN	Class D Felony + 3 to 8 years	Class D Felony	Decrease
CAN instead of OWI Serious Bodily Injury	Class D Felony	Class B Felony	Increase
CAN OWI Serious Bodily Injury	Class C Felony	Class D Felony	Decrease
CAN OWI (2+) Serious Bodily Injury	Class C Felony + 3 to 8 years	Class B Felony	Increase
OWI Serious Bodily Injury CAN	Class D Felony	Class D Felony	Same
OWI (2) Serious Bodily Injury CAN	Class D Felony + 3 to 8 years	Class D Felony	Decrease
CAN instead of OWI Death	Class C Felony	Class A Felony	Increase
CAN OWI Death	Class B Felony	Class C Felony	Decrease
CAN OWI (2) Death	Class B Felony + 3 to 8 years	Class B Felony	Decrease
OWI Death CAN	Class B Felony	Class A Felony	Increase
OWI (2) Death CAN	Class B Felony + 3 to 8 years	Class A Felony	Increase

*CAN = Child Abuse or Neglect

Included below is a chart which summarizes range of prison term sentences; average length of stay; and maximum fines; for felonies and misdemeanors that are applicable to this bill. While it is unknown what exact scenarios may occur each year, the chart demonstrates the differences in expenditures that a state or a local government may experience.

Felony and Misdemeanor Penalty Summary.				
Penalty	Range of Prison Term	Average Length of Stay	Maximum Fine	Responsible Government
Class A Felony	20 to 50 years	9.1 years	\$10,000	State
Class B Felony	6 to 20 years	3.7 years	\$10,000	State
Class C Felony	2 to 8 years	2 years	\$10,000	State
Class D Felony	6 months to 3 years	10 months	\$10,000	State
Class A Misdemeanor	1 year	NA	\$5,000	Local
Class C Misdemeanor	60 days	NA	\$500	Local

State Expenditures: Depending on what scenarios occur, the state may have a larger or smaller number of individuals in jail for a longer or shorter period of time. State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail, or if an offender is incarcerated in a state prison for a longer period of time. Expenditures could decrease if the offender were incarcerated for a shorter period of time. The period of incarceration will depend upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Explanation of State Revenues: The state would likely experience a change in revenue as a result of this bill. The bill could increase or decrease revenues depending on what scenarios occur and whether or not penalties (and, as a result, fines) for individuals increase or decrease.

Explanation of Local Expenditures: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, any cost reduction is likely to be small.

Explanation of Local Revenues: No additional revenues would be expected since the court fees for misdemeanors and felonies are the same.

State Agencies Affected: Family and Social Services Administration; Department of Correction.

Local Agencies Affected: County Offices of Family and Children; County Prosecuting Attorney; Courts with Juvenile Jurisdiction; Trial courts; Local Law Enforcement Agencies.

Information Sources: Jane Bisbee, Family and Social Services Administration; Steve Johnson, Prosecuting Attorney's Council, 232-1836.

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